IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5911 OF 2006

1. Baburao Ramchandra Jadhav & 5 ors.] .. Petitioners

Versus

1. Smt. Hirabai R. Jadhav & 5 ors.] .. Respondents

Mr. Sanjay Prabhu h/f N.V. Bandiwadekar for the petitioners.

Mr. Vaibhav Patankar for the respondents No.1 to 6.

CORAM: S.B. MHASE, J.

DATED: 30TH APRIL, 2007

P.C. :

. Heard.

2. Special Civil Suit No.34 of 2004 has been filed by the respondents No.1 and 2 as against petitioners No.1 to 6 and respondents No.3 to 6. For the sake of convenience, it is clarified that the respondents No.1 and 2 are the original plaintiffs while the petitioners No.1 to 6 are the original defendants No.1 to 6 and respondents No.3 to 6 are the original defendants No.7 to 10. The said Suit has been filed for partition and possession of one-third share of the plaintiff No.1 and one-sixth share of the plaintiff

No.2. The genealogy of the plaintiffs and defendants is as follows. One Ramchandra was an ancestor of the plaintiffs and the defendants. The said Ramchandra had two wives viz. Radhabai and Hirabai. Admittedly, Radhabai was the first wife and she had expired in the year 1930. Thereafter, Ramchandra re-married with plaintiff Hirabai. Ramchandra and Hirabai are having a son by name Bapu who is defendant No.1, while the defendant No.2 Suresh is the son of defendant No.1 Bapurao. Defendant No.3 Sharda is the wife of defendant No.2 Suresh and defendants No.4, 5 and 6 are the sons of defendants No.2 and 3. Plaintiff No.2 Bhagirathi is the daughter-in-law of the plaintiff No.1 i.e. she is the wife of one Mahadeo who was the son of defendant No.1 out of the wedlock of plaintiff No.1 with the said Ramchandra. Vilas - the defendant No.7 is the son of the said Mahadeo and plaintiff No.2 Bhagirathi, while defendant No.8is the wife of defendant No.7 Vilas. Defendants No.9 and 10 are the children of defendants No.7 and 8.

3. The above relation itself shows that this is a dispute between the linear descendants from the two wives of the said Ramchandra and one branch of Hirabai is claiming a share in the property. Therefore, the Suit for partition has been filed. The plaintiffs have

averred that the plaintiffs are in joint possession with the defendants. They have also claimed an injunction that their joint possession should not be disturbed. Under these circumstances, the other branch viz. defendants No.1 to 6 have filed an application claiming maintenance from the plaintiffs who happen to be the mother and deceased step brother's wife. It is interesting to note that the very relation and the nature of the suit. If properly perused, it is eloquently clear that the application for maintenance under Section 151 of the Civil Procedure Code has been filed only as a counterblast to the main Suit which had been filed by the petitioners.

4. The trial Court has rightly rejected the said application. No interference is called for. Writ Petition is hereby rejected.

Sd/-
[S.B. MHASE, J.]